

In re) Fair Hearing No. 11,579
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Appeal of)

The petitioner appeals the decision by the Department of Social Welfare denying her application for Medicaid. The issue is whether the petitioner is disabled within the meaning of the pertinent regulations.

The petitioner is a fifty-two-year-old woman with a high school education. She has worked as a cook, waitress, and bartender in restaurants and as a self-employed house cleaner.

The petitioner, who was working doing house cleaning in August, 1992, has not worked since her hospitalization at that time. However, statements from her doctors indicate that while strenuous activity may "provoke" the petitioner's hemoptysis, it is unlikely that this condition would prevent the petitioner from performing at least "light work" (i.e., jobs requiring standing or walking and lifting of up to 20

pounds)¹ for a continuous twelve months--especially if she can give up or cut down on her smoking. However, the petitioner's doctors and the petitioner herself indicated that they were primarily concerned that the petitioner's skin cancer be treated immediately.²

Inasmuch as the medical evidence does not establish that the petitioner's medical conditions are likely to preclude the petitioner from performing at least "light work" for twelve consecutive months, under the regulations (see infra) the petitioner, in light of her age, education, and work experience, cannot be considered disabled.

ORDER

The Department's decision is affirmed.

REASONS

Medicaid Manual Section M211.2 defines disability as follows:

Disability is the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment, or result in death or has lasted or can be expected to last for a continuous period of

¹20 C.F.R. § 416.967(b).

²At the hearing the petitioner was advised to apply for general assistance (GA) for this "emergency" treatment. The hearing officer has been informed that the petitioner subsequently received a GA "voucher" for this treatment and that she has had the necessary surgery.

not fewer than twelve (12) months. To meet this definition, the applicant must have a severe impairment, which makes him/her unable to do his/her previous work or any other substantial gainful activity which exists in the national economy. To determine whether the client is able to do any other work, the client's residual functional capacity, age, education, and work experience is considered.

In this case, neither the petitioner's hemoptysis nor her skin cancer can reasonably be expected to prevent the petitioner from performing at least "light work" for the requisite twelve consecutive months.³ In light of the petitioner's age, education, and work experience, she cannot be considered disabled under the pertinent regulations. 20 C.F.R. § 404, Subpart P, Appendix 2, Rule 202.13. The Department's decision is, therefore, affirmed.

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³If the petitioner's condition should worsen she should reapply for benefits.